Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

CHARLES SHEPHARD- PETITIONER

VS.

POMONA FAIRPLEX, LOS ANGELES COUNTY FAIRGROUNDS, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, MONROVIA POLICE DEPARTMENT, OFFICER SANDRA GATTS, OFFICER ALBERT COVOS-RESPONDENT(S)

ON PETITION FOR A WRIT CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA PETITION FOR WRIT OF CERTIORARI

CHARLIE SHEPHARD
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77pp

QUESTION(S) PRESENTED

1. SUPREME COURT DECISION:

a. Why was the appellate petition for review was denied on October 15, 1997.

b. Why did the court rule on October 15, 1997, but on October 13, 1997, stated to the petitioner to file a supplemental brief, because the ruling would be November 4, 1997.

c. Why did the court send the supplemental brief back to the petitioner without a reason.

d. Can the State Supreme Court Clerk make changes on a petition for review of decision.

2. Appellate Court Ruling

a. appellate court grant the order base on the lower court decision on vexatious litigant and frivolous motion.

b. Whether or not Petitioner declaration in opening brief illustrated case merit and if so did the second appellate court made an error in not reversing the lower court decision.

3. Superior Court Ruling

a. Did the lower court exceed its jurisdiction by not declaring Pomona Fairplex in default, as the facts had clearly shown exceeded the civil jurisdiction to affirm.

b. Was the lower court unfair in not ordering a judgment in favor of the Petitioner on the facts that the respondent Los Angeles County Sheriffs Department and the Monrovia Police Department violated the Appellate Rule 41 by not answering or replying to the Petitioner default.

c. Did the lower court exceed its authority by not declaring Monrovia Police Department and Officer Sandra Gatts in default based upon the facts presented to the lower court.

d. Did the lower court exceed its authority by changing the original filing date that was file originally on the first amended complaint.

e. Did the lower courts failure to grant petitioner leave to amend his complaint abuse of due process.

f. Whether or not under Section 128.5 did the plaintiff made frivolous motion during the proceeding.

g. Can the lower court deny the Petitioner motion for reconsideration under CCP S 1008 ET SEQ., and declare the petitioner as vexatious litigant under section 391 (b) (2) and (3).

h. Did the lower court violate the petitioners civil rights by granting an injunction regarding harassment.

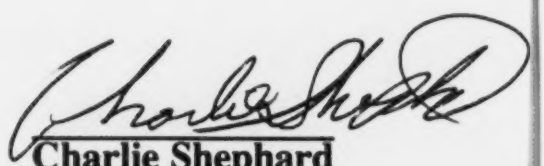
i. Was the Los Angeles County Sheriff Department training officer in violation of u2 U.S.C.A. S 1983.

LIST OF PARTIES

The undersigned Counsel of Record certifies that the following listed parties have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Pomona Fairplex, Los Angeles County Fairgrounds, Los Angeles County Sheriffs Department, Monrovia Police Department, Officer Sandra Gatt, Officer Alber Cobos, Respondents.

Charlie Shephard, Petitioner



Charlie Shephard
Petitioner in Profer

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TABLE OF AUTHORITIES CITED

CASES

Lick v. Stockdale et. Cal 219

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Martin F. Roston Plaintiff and Appellant v. Roston Institute, Inc. California Corporation, Plaintiff and Appellate v. Meher Montessori School et al Defendant and Respondent. 127
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Cohen v. Beneficial Industrial Loan Corp. P. 541 No. 422 Certiorari to the United States Court of Appeals for the Circuit.

Lusby v. T.G. & Y Stores, Inc. cite as 749 f. 2d 1423 (1984)

Thomas R. Rutherford, Plaintiff v. City of Berkeley, et al, Defendant. 780 Federal Reporter 2d series

Baker v. McCollan. C.A. 5}{\super th}{ Cir. 575 f. 2d 509

Mick v. Brewer cite as 76 f. 3d 1127 (10}{\super th}{ Cir. 1996)

Estate of Darron L. Starks, Plaintiff v. Donald L. Enyart, Thomas I. Black and Thomas E. Schaffer, Individually and as Officers of the Indianapolis Police Department, Defendant. 5 Federal Reporter, 3d series

United States of America, Plaintiff-Appellee, v. Juan Dale Reese, Defendant-Appellate. United States of America, Plaintiff-Appellee, v. Scott Matth
ew Dwyer, Defendant- Appellate, v. Daniel Wayne Broussaro, Defendant-Appellate v. United States of America, Plaintiff-Appellee, v. Larry Mancel Houston, Defendant-Appellate. 2 Federal Reporter 3d series pg. 870

City of Oklahoma City v. Tuttle, individually and as Administratrix of the Estate of Tuttle (Syllabus 471 U.S. Pg. 808 728 f 2d 456

Perry v. Elrod, cite as 436 f. Supp 299 (1977)

Avery v. County of Burke, 660 f. 2d 111.114 (4TH Cir. 1981)

Thomas R. Rutherford, Plaintiff-Appellant v. City of Berkeley et al, Defendant-Appellee. 780 Federal Reporter, 2d series Pg. Cite as 780 f. 2d 144 (7TH Cir. 1986)

Baker v. McCollan. 443 U.S. 1114 (9179) 439U.S.137 Pg. 137, 575 f. 2d 509.

Baker v,. Gold Seal Liquors, 417 U.S. 467 (1974) Pp. 468-474, 484 f. 2d 950.

Henry Howell, Appellant v. Catalai et al. 464 Federal Reporter, 2d series

Scheuer, Administratrix v. Rhodes, Governor of Ohio, et al. 416 U.S. Pg. 232 Syllabus nd-72-914

Estelle, Correction Director v. Gamble Pg. 97 Syllabus 429 U.S.

STATUTES AND RULES

CCP S 585 (A) (B)

CCP s 128.5 B (1) (2) A&B

CCP. 391

[42 U.S.C.A. Section 1983, 1985, 1988]

Federal Civil Rights Acts 221 221 Mont. 4477, 720 P.2d 1148. 1155

Government Code Section 61.01 (4); 61.02; 840 (a) (b) Under 42 U.S.C. Section 1981 42 U.S.C. Section 1981 42 U.S.C. Section 1983

CCP S 527 (C-4), (E), (F)

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CHARLES SHEPHARD \ENDASH PETITIONER

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POMONA FAIRPLEX, LOS ANGELES COUNTY FAIRGROUNDS, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, MONROVIA POLICE DEPARTMENT, OFFICER SANDRA GATTS, OFFICER ALBERT COVOS \ENDASH RESPONDENT(S)

ON PETITION FOR A WRIT CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA PETITION FOR WRIT OF CERTIORARI

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, A995

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

LIST OF OPINIONS

For cases from **State Courts:**

A. The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

B. The Opinion of the 2nd Appellate Court at Appendix B to the petition and is unpublished.

STATEMENT OF JURISDICTION

For cases from **State Court:**

1. The date on which the highest state court decided my case was on October 15, 1997. A copy of that decision appears at Appendix A.

2. A timely petition for rehearing was thereafter denied on the following date October 15, 1997, and a copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. S 1257 (a).

CONSTITUTIONAL AND APPLICABLE STATUTORY PROVISION INVOLVED

U.S.C.A. SECTION 1981, 1983, 1985, 1988.

FOURTEENTH AMENDMENT

GOVERNMENT CODE SECTION 61.04 (4), 61.02 (2), 840 (A) (B), 835 A&B 42 U.S.C. SECTION 1983

CIVIL RIGHTS S 8 REDERAL CAUSE OF ACTION-STATE-JURISDICTION

GOVERNMENT CODE SECTION S 3300 ET SEQ. AND SECTION S 3309.5 AND SECTION 821.6

GOVERNMENT CODE SECTION 815.2 (A)

STATEMENT OF THE CASE

On October 11, 1995 the Petitioner entered the grounds of the Pomona Fairplex and was the target of two uniformed officers: Sandra Gatts, of the Monrovia Police Department, and officer Alber Cobos of the Los Angeles County Sheriffs Department. Officer Gatts pointed a gun in the face of the Petitioner and Officer Cobos placed his hand on his gun in the holster but did not draw. Petitioner was stunned at this time as there was no probable cause for this action and no explanation was given to Plaintiff. Both officers then walked away from the area. Neither officer read the Petitioner his miranda rights. The Petitioner's life flashed before his eyes as though facing certain death. Petitioner was later informed that this was a " practice ground for police training". In violation of my civil rights, the Department has never ordered the officer in question to do a written report for my information in order to know what their position is in respect to the matter. The other Civil Rights Violation is and was to not offer me any volunteer compensation for my trauma. Also,

by me being of " African Descent" , it's violation of the 11-14

Amendment and of the Title VII plus V.S.C.A. of the 1964 Civil Rights. The Petitioner was a paying guest at the Pomona Fairplex and was not a part of the training. Neither officer gave any type of explanation as to why they performed this act nor did neither officer apologize to the Petitioner.

On October 30, 1995, the Los Angeles County Sheriffs Department Commander's service report stated by Officer Sgt. Mike Payne that both Officer Sandra Gatt and Officer Alber Cobos was in violation of improper tactic and neglect of duty during their performance as a trainee officer's. See Appendix F.

On April 4, 1996, the Petitioner received a letter from the office of Rudy Deleon, Ombudsman, County of Los Angeles, stating that changes would be made and trainers, trainees and related persons in the area wi

ll be appraised of activities. Communications will include signs and announcements to make others aware that training sessions are or may be in progress and this was all due to the Petitioner Complaint that he

had made regarding this incident. See Appendix D

On April 10, 1996, the Petitioner filed a summon and complaint against the above mentioned parties of this case.

On April 26, 1996, Mr. Dave Deardon of Carl Warren & Co. came to the Petitioner's home to investigate the claim. During their conversation, Mr. Deardon stated to the petitioner that within five (5) days you would receive a letter in the mail stating if the claim was denied or approved. And if it was approved he would give the petitioner a claim number and the name of the insurance company. Mr. Deardon also stated to the petitioner that he had to send in his report to the legal department so they can answer the complaint within thirty (30) days or it would go into default. And if it did go into default they would have to pay t he full amount requested in the complaint. At this time both the petitioner and the Mr. Deardon discussed a possible settlement and ask the petitioner what would he take as offer. And the petitioner stated that he would take 50% of the amount of the claim. Mr. Deardon stated that it would be more like 10% and the petitioner sstated that he would take 25% and sign a release and

relieve Fairplex of any further damages. But it would not relieve the other defendant. Mr. Deardon stated that Pomona Fairplex was a private entity and other defendants was a government entity and could not be released by the Pomona Fairplex.

On April 13, 1997, the attorney for the fairgrounds sent the Petitioner a letter with an attached copy of CNA Insurance Company letter of acceptance that was dated May 02, 1996, which the Petitioner had received for the first time. Due to the fact that the insurance claim investigator from CNA mailed it to the wrong address. See Appendix E. The Petitioner contacted Larry Lakeman of CNA's special handling division in Chicago, Illinois. Mr. Lakeman informed the plaintiff that the Fairplex was not dismissed his company would be responsible for 40% of the damages and the other Defendants were responsible for the remaining 60% but the other defendants were dismissed CNA would be responsible for the total protection of the fair's guest.

REASON FOR GRANTING THE PETITION
ERROR MADE BY THE SUPERIOR COURT

The case was shown that there was triable issue. Once it was precluded that there was triable issue the court had set a jury trial for January 28, 1998.

Before the trial could take place the court cancel the trial because during the petitioner discovery that the Monrovia Police and Officer Sandra Gatts was the defendants as well as the Los Angeles County Sheriffs training center and Officer Cobos. And the plaintiff added them as does so therefore the court cancel the hearing. But under Section 474 ccp you are allow to add does to the amendment complaint once they are discover.

The court granted the defendant a demmuer because the petitioner had use federal case in a state court and the judge stated to the petitioner that he could not use any federal cases in a superior court case.

The court ordered that the petitioner was a vexatious litigant under sec 391 (b) (2) and (3). Which the petitioner had shown to the court that he was not a vexatious litigant, because in ordered for that you must

have filed more than five motion in a year which the petitioner had not done so.

The lower court also stated that the plaintiff could not use federal cases in a lower court decision but under Civil Rights S 8 Federal Cause of Action State Jurisdiction with Federaal Courts over Civil Rights under 42 U.S.C. S 1983.

The petitioner went to the State Supreme Court of Appeal to file a brief when the supervisor clerk took the petitioner check and took exhibit out of the brief and told the petitioner that he was wasting his money by paying the court fees and also stated to the petitioner that the court did not have to take his appeal. The petitioner had done a lot of legal research and had the brief prepare in the right contents. See Appendix I

On May 21, 1997 Judge Mortimer stated to the Petitioner that he admitted that their was error made by the court but the petitioner would have to take it up with a highter court and his attend ruling stand.

MERIT OF THE CASE
REGARDING POMONA FAIRPLEX,
LOS ANGELES COUNTY FAIRGROUNDS
BEING IN DEFAULT.

The Petitioner, on April 10, 1996 filed in the Superior Court in the State California, in County of Los Angeles, a summon and complaint and served by the Los Angeles County Sheriff Department by Deputy Keith A. McDermott on April 19, 1996, pursuant to Code of Civil Procedure S 585 (a), (b); when the defendant has been served if, other than publication the clerk on petitioner application, must enter the default or the defendant(s) so served if, within the time specified in the summon. The time permitted for responsive pleading generally is thirty (30) days. Which in this case the Petitioner did wait the regulation time for the Defendants to response. The Defendants did not respond nor request from the Court an extension of time to the summon and complaint that was served upon them by the Petitioner which was due on May 20, 1996. The Petitioner file with the court a judgment for entry of default by the clerk which the Petitioner

did so so and waited for a response from the court. After more than thirty (30) days had elapsed, since the date on which the Defendant purported to have served the Petitioner with response to the complaint which was filed on April 10, 1996, although Petitioner did not receive Defendants answer to the complaint until May 22, 2996 the petitioner personally went down to the court to find out if the Defendant had file a response from the Defendants. At that time the plaintiff on June 12, 1996 went back to the court and file a request for Entry of Judgment against the Defendants. On proper application, the clerk must enter the Defendant's into default after thirty (30) days after the summons and complaint was served to the Defendant(s) or within the time allowed by the court. See Appendix G for proof service.

The Petitioner by law have the right to file a judgment for entry of default against the Defendant(s).

See Smith v. Billet, 15 Cal. 26., Tuolumne REdemption Co., v. Patterson, 198 Cal. 415; 18 Cal. The court holds and affirmed in this case that the judgment by default is regularly entered, the judgment is

valid. After the summon and complaint was file and the Defendant answering had expired, the clerk entered a default. Judgment for the Plaintiff was granted. Lick v. Stockdale et al. 18 Cal 219. The finding of the Court is, that the Defendant was duly served with process; and this recital is sufficient to show that the Court had Jurisdiction, It is enough if the fact exist which are require to give jurisdiction to the Court; and the finding in this case is that they do exist. In conclusion even though the court made it decision regarding the defaultwhich was establish that by default that the Defendants was in default by law. In accordance with Rule 55 Federaal Rules of Civil Procedure, for the purpose of enabling the Plaintiff to obtain an entry of default against the Defendant, for its failure to timely answer or otherwise defend as to believed that they respond to the complaint. On May 21, 1996, as purported, they still failed; to comply with the summons (citacion judicial), which stipulate as follows:

You have 30 calendar days after this summons is served on you to file a typewritten response at this court. A letter or phone call will not protect you; your

typewritten response must be in proper legal form if you want the court to hear your case. If you do not file your response on time you may lose the case, and your wages, money and property may be taken without further warning from the court.

VEXATIOUS LITIGANT
ERROR MADE BY THE COURT

The Superior Court Order that the petitioner in this action was a vexatious litigant in which we have proven to the court that the Petitioner was not a vexatious litigant. See Martin F. Roston Plaintiff and Appellant v. Roston Institute, Inc. California Corporation Plaintiff and Appellant, v. Meher Montessori School, et al Defendants and Respondents. 127 Cal Ap 842 P. Civ 25468, 25469. Where the Plaintiff had filed only one prior litigation that satisfied condition of statue defining vexatious litigant to mean any person who, in immediately preceding seven-year period has commenced, prosecuted or maintain in propria persona at least five litigations other than small claims court that have been finally determined adverse-

ly to him or unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing evidence was insufficient were vexatious litigants. See Cohen v. Beneficial Industrial Loan Corp. Syllabus Cohen Executrix, et al v. Beneficial Loan Corp. P. 541 No 442 Certiorari to the United States Court of Appeals for Third Circuit. A Federal District Court, having jurisdiction of a stockholder's diversity of citizenship, denied a motion to require the plaintiff to post security for reasonable expense incurred by the defendant, as required by a statute of the forum.

The Defendant was also in violation of Federal Cons titutional Rights 42 U.S.C.A. SECTION 1983, 1985, and Federal Civil Rights Act 221 Mont., 447, 720 P. 2d 1148, 1155., and also, United States of America and California Government Tort Liability Code Sec. 61092 (2); Government Code Sect. 810.08 which discuss the alternative grounds for liability based on negligent or wrongful act of the employee or on inadequate protective measure taken by the employee, are different from the alternative grounds set forth for public entity liability under Government Code Section 835 (a) and (b) and discussed in S 61.04

(4) 840.2 (a) Under Section 840.2 (a) a public employee is subject to liability for injuries caused by conditions which he or she has negligently created which cause the Plaintiff in the first place to file a complaint. Also under Gov. Code S 3300 et seq. The defendant's conduct is not immunized by the general governmental immunity of Government Code section 821.6 for action by public employees in instituting and/or prosecuting any proceeding, including disciplinary proceedings. We further hold that plaintiff has alleged facts sufficient to state a cause of action for injunctive relief pursuant to 42 U.S.C. section 1983 and 1985, and therefore reverse the judgment. Civil Rights S 8 Federal Cause of Action – State Jurisdiction. The California courts exercise concurrent jurisdiction with federal courts over civil rights action under 42 U.S.C. S 1983. Also the court should reverse the sanction fees from the Pomona Fairplex, Los Angeles County Sheriff Department and the Monrovia Police Department.

INJUNCTION ORDER FOR HARRASMENT

On November 17, 1997 the Superior Court of Los Angeles County of Los Angeles East District granted an order requesting the petitioner in this the a bove entitled action was found to be harrasing the Pomona Fairplex employee and threatening the Attorney for the Defendant(s). Prior to the hearing date the petitioner had file and requested that the court grant an extension of time so therefore the Petitioner would have time to response to order which the court denied the request. During the time of the hearing the petitioner again requested to the court for a extension of time, because he was not prepare for this hearing in regard to legal research our even go through his documents. What the Attorney had stated to the judge in his order was not true and false. But under Section S 527 C; 4, F, state as follows:

A. (C) Preliminary Procedure to Obtain stated that for reasons specified the applicant should not be required to so inform the opposing party or opposing party's attorney.

B. (C-4) The opposing party is entitled to one continu-

ance for a reasonable period of not less than 15 days or any shorter period requested by the opposing party, to enable the opposing party to meet the application for a preliminary injunction. If the opposing party obtains a continuance under this paragraph, the temporary restraining order shall remain in effect until the date of the continued hearing.

C. (F) Notwithstanding failure to satisfy the time requirements of this section, the court may nonetheless hear the order to show cause why a preliminary injunction should not be granted if the moving and preliminary injunction should not be granted if the moving and supporting papers are served within the time required by Section 1005.

The Petitioner did request for extension of time in the proper time as per section 527. Also during the hearing the judge in this hearing agreed and understood that the petitioner was not ready but had still went favor of the defendants. The Petitioner is also requesting for a rehearing on this matter as well.

The Petitioner is also requesting that the Attorney show the date, time and place of those allegation the attorney has claim took place as well as other allega-

tion that was made. The Petitioner has stated to the Judge that he was the victim not the defendant in this case and why was sanction order against him. The Judge agreed with the petitioner but stated to the petitioner that the order still stand.

MERIT OF THE CASE
REGARDING MONROVIA POLICE DEPARTMENT AND OFFICER SANDRA GATTS BEING IN DEFAULT

On January 27, 1997, the Plaintiff in this action filed a summons and complaint in the Superior Court in the State of California, in the County of Los Angeles, against the defendant, Monrovia Police Department Officer Sandra Gatts. On February 18, 1997 approximately 09:55 a.m. a copy of the summon and complaint was served to Monrovia Police Department Officer Sandra by the Los Angeles County Sheriff Department by Los Angeles County Deputy Gary D. Laws. On March 19, 1997 the Petitioner was in court the Defendant was not in court or file any response to the summon and complaint during the hearing the Judge change the original filing date from January 27, 1997 to March 19, 1997. On March 20, 1997 was the

last date for the Defendant to file in a timely manner. The Defendant failed to file a response to the complaint as order by the summons. Pursuant to rule 55 of Federal Rules of Civil Procedure for their failure to timely file a response to the Court. Pursuant to Code of Civil Procedure S585 (a), (b); when the Defendant has been served other than by publication the Clerk; on Plaintiff's application must enter the default or the Defendant(s) so served if, within the time specified in the summons. The time permitted for responsive pleading generally is thirty (30) days. The Plaintiff waited the regulation time for the defendant to response. The Defendant did not respond nor request from the Court an extension of time to answer the summon and complaint that was served upon the Defendant by the Plaintiff which was due on March 20, 1997.

On proper application, the clerk must enter the Defendant's into default after thirty (30) days after the summons and complaint was served to the Defendant(s) or within the time allowed by the Court. See Appendix H for the proof of service.

The Plaintiff by law have the right to file a judgment

for entry of default against the Defendant(s). Referring to: Smith v. Billet, 15 Cal. 26. The Court holds and affirmed in this case that the judgment by default is regularly entered, the judgment is valid. After the Complaint was filed and the Defendant answering had expired, the clerk entered a default. Judgment for the plaintiff was granted. And See: Tuolumne Redemption Co., v. Patterson, 198 Cal 415; 18 Cal 219 Lick v. Stockdale. The finding fo the Court is, that the Defendant was duly served with process; and this recital is sufficient to show that the Court had jurisdiction. It is enough if the facts exist which are require to give jurisdiction to the Court; and the finding in this case is that they do exist. In conclusion even if the Defendant was to believed that she had responded to the summon and complaint, which was establish that by the default. In accordance with Rule 55 Federal Rules of Civil Procedure, for the purpose of enabling the Plaintiff to obtain an entry of default against the Defendant, for its failure to timely answer or otherwise defend as to the Plaintiff's complaint On March 20, 1997, as purported, they still failed to com-

ply with the summons (citacion judicial), which stipulate as follows:

You have 30 calendar days after this summons is served on you to file a typewritten response at this Court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case. If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

ERROR MADE BY THE STATE SUPREME COURT OF CALIFORNIA

On September 8, 1997 the Supreme Court Clerk took the Petitioner brief and changes the cover page and delete the defendant Pomona Fairplex Los Angeles County Fairgrounds and Monrovia Police Department and wrote in Los Angeles Sheriffs Department only. The Clerk also took out Exhibit from the document. The Petitioner was a paying guest at the Pomona Fairplex.

During conversation with the defendant Pomona Fairplex attorney, the Petitioner had stated to the attor-

ney that the Pomona Fairplex had stated that they admit that they were in fault and provide the petitioner with the insurance company. At that time the Petitioner also stated to the attorney that he had no defense and the reply to the petitioner by stating that he had more experience than the petitioner. This does not have anything to do with this case, what is involved is the Fairplex has already admitted being in fault and was already to settle with the petitioner.

LOS ANGELES COUNTY SHERIFFS DEPARTMENT TRAINING CENTER SUPERVISORY, LIABILITY FOR POLICE MISCONDUCT

On October 30, 1995, the Los Angeles County Sheriffs Department Commmander's service report stated by Sgt. Mike Payne admitting that both Officer Sandra Gatts and Albert Cobos was in violation of improper tactic and neglect of duty during their performance as a trainee officers.

After during an extensive recherche in the library the petitioner had discover that under section 42 U.

S.C.A. S 1983, which state that: within rule that supervisory official is liable for civil rights violation committed by subordinates on basis of deliberate indifference manifested by recklessness, "recklessness" is measured only by objective standard, that is whether supervisor's conducted evidences such disregard of plaintiff's established rights that conduct cannot be characterized as being in good faith and defendant's subjective good faith on state mind is irrelevant. If supervisory official is deliberately or recklessly in different to constitutional violation by his subordinates or others under his control his indifference is actionable under civil rights acts: see Perry v. Elrod cite as 436 F. Supp. 299 (1977). Also under police misconduct S3.4(b) Proximate cause required: The liability of supervisory officers does not depend upon their personal participation in the acts of their subordinates which immediately brought about in violation of the plaintiff's constitutional rights. Avery v. County of Burke, 660 F. 2d 111, 114 (4th Cit. 1981). The supervisor may not be on the scene and may not even know of the incident in question, yet still be liable to the plaintiff.

The issue, correctly phrased, is whether the supervisor has done something, or failed to do something which he ought to have done, which was a proximate cause of the violation of the plaintiff's constitutional rights. Black v. Stephens, 666 F 2d 181, 189 (3d Cir 1981).

POLICE MISCONDUCT AND MUNICIPAL POLICY

Under Police misconduct, both Officer Sandra Gatt (Defendant), and Officer Albert Cobos (Defendant), were in violation of police misconduct, due to false imprisonment drawing their weapon at the plaintiff face, intentional infliction of emotional distress and other unlawful conduct. Defendant, acting under color of legal authority, deliberately or recklessly denied plaintiff full and equal benefits of law. City of Oklahoma City v. Tuttle, individually, and as Administratrix of the Estate of Tuttle, 471 U.S. Syllabus pg. 808 728 F. 2d 456: An Officer on petitioner city's police force shot and killed respondent's husband outside a bar in which a robbery had been

reported in progress. Respondent brought suit in Federal District Court under 42 U.S.C. S 1983 against the officer and petitioner, alleging that their actions had deprived her husband of certain constitutional rights. The Court of appeal held that proof of a single incident of unconstitutional activity by a police officer could suffice to establish municipal liability. United States of America, Plaintiff-Appellee v. Juan Dale Reese, Defendant-Appellant. United States of America, Plaintiff-Appellee v. Daniel Wayne Broussard, Defendant-Appellee. United States of America, Plaintiff-Appellee v. Larry Marcel Houston, Defendant-Appellant. 2 Federal Reporter, 3d Series Pg. 870: Following jury trial before the United States District Court for the Northern District of California, Fern M. Smith, Defendant housing authority police officers were found guilty of federal civil rights crimes. Officers appealed. The court held that (1) claims that housing authority officers used excessive force in the course of arresting or detaining suspects had to be analyzed under Fourth Amendment; (2) Supervision sergeant who stood by and allegedly

watched while officers under his command used excessive force could be convicted of civil rights violations for thereby " subjecting victims to loss of their rights to be kept free from harm while in official custody or detention. Thomas R. Rutherford, Plaintiff-Appellant v. City of Berkeley, et al., Defendant-Appellee 780 Federal Reporter, 2d Series Pg Cite as 780 F. 2d 144 (9th Cir. 1986) 1444, Citizen brought civil rights action against police officer to recover for alleged brutality. The Court of Appeal, Pool, Circuit Judge, held that existence of post deprivation state remedy does not bar a substantive due process claim, such as asserted by the citizen, and that case was for the jury. Solomon Lusby, Vaughn Lusby and Alvin Jerard Lusby, Plaintiffs-Appellees v. T.G.& Y. Stores, Inc., an Oklahoma corporation; City of Lawton, Oklahoma, a municipal corporation; Charles Gent; Steve Weertz; and Kent Dunegan, Defendants-Appellants Cite as 749 Fd. 1423 (9184): Customer and his brothers against whom charges, inter alia, of petty larceny and assault and battery were dropped, asserted civil rights and pendent state tort claims against city, two police offi-

cers, retail, store, and store's security guard. The court held that a jury verdict for all plaintiffs on civil rights claim. Mick v. Brewer Cite as 76 F3d. 1127 (10TH Cir. 1996) Driver subject to Terry stop brought action against police officers and against federal agent to recover damages, under S 1983 and Bivens, for injuries resulting from one police officer's allegedly excessive use of force. Estate of Damon L. Starks, et al., Plaintiffs-Appellees v. Donald L. Enyart, Thomas I. Black, and Thomas E. Schaeffer, individually and as Officers of the Indianapolis Police Department, Defendants-Appellants. 5

Federal Reporter, 3d Series Pg 230 Cite as 5 F3d 230 (7TH Cir. 1993) Estate of car theft suspect, who was shot and killed by police officers while attempting to avoid arrest, brought S 1983 action against officers for violating suspect's civil rights. Henry Howell, Appellant v. Cataloi et al, 464 Federal Reporter, 2d Series: Action was brought for alleged violation of civil rights. The United States District Court for the Eastern District of Pennsylvania, Harold K. Wood, J., directed a verdict for the defendants, and the Plaintiff appealed.

The Court held that evidence including testimony that an officer " picked" Plaintiff and that another banged him on the shins with a wooden club was insufficient to make a prima facie case against other officer, for want of identification of either officer as participating in the assault.

GRANTING WRIT CERTIORARI

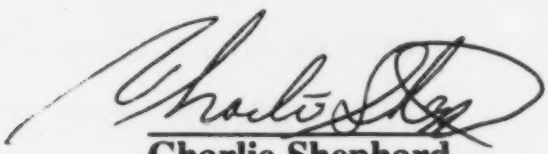
The Plaintiff is requesting the court to grant the of writ of certiorari. See Baker v. McCollan 439 U.S. 1114 (1979) Pg. 137, 575 F. 2d 509: which state that the respondent filed claim and against the Sheriff Department and his surety under Section 42 U.S.C. S 1983 for false arrest in which the Sheriff's Department had violated the respondent civil rights. The Court held affirmatively, holding that respondent was entitled to have his S1983 claim presented to the jury. Which the court granted the certiorari. Baker v. Gold Seal Liquors, 417 U.S. 467 (1974) Pp. 468-474 484 F.2d 950: Petitioners, trustees of a railroad in a S77 reorganization proceeding brought suit for freight charges against respondent shipper, and respondent counter-

claim for cargo loss and damages. The granted the Plaintiff and the respondent file and the court granted the writ certiorari. Also in the above case of City of Oklahoma v. Tuttle the Appeal Court granting the Defendant Tuttle a writ of certiorari. Scheuer, Administratrix v. Rhodes Governor of Ohio, et al. 416 U.S. Pg. 282. Syllabus No-72-914. The Court granted certiorari in these cases to resolve whether the District Court correctly dismissed civil damage actions, brought 4 U.S.C. S 1983, on the ground that these actions were, as a matter of case, against the State of Ohio and hence barred by the facts assumed that conclusion. (Certiorari granted). Estelle, Corrections Director, et al v. Gamble, Pg 97 Syllabus 429 U.S.: Respondent J. W. Gamble, an inmate of the Texas Department of Corrections was injured on November 9, 1973 while performing a prison work assignment. On February 11, 1974 he instituted this civil rights action under 42 U.S.C. S1983, the Court of Appeal granted certiorari

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully submitted,



Charlie Shephard

Date: January 7, 1998

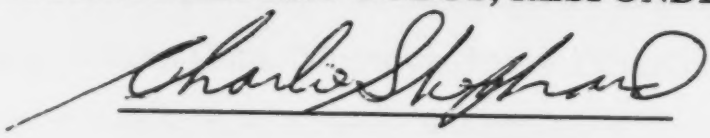
NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

CHARLIE SHEPHARD, PETITIONER

VS.

POMONA FAIRPLEX, LOS ANGELES COUNTY FAIRGROUNDS, LOS ANGELES SHERIFFS DEPARTMENT, MONROVIA POLICE DEPARTMENT, OFFICER SANDRA GATTS, OFFICER ALBERT COBOS, RESPONDENTS



Declaration of Charlie Shephard

Charlie Shephard
P. O.Box 521
Ontario, California 91762
(909) 391-7869

DECLARATION OF CHARLIE SHEPHARD

I, Charlie Shephard, Petitioner in this action declare as follows to be true and correct to the best of my knowledge as follows:

PREMISES LIABILITY

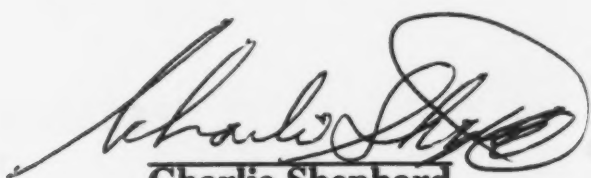
On October 11, 1995 Plaintiff entered the grounds of Pomona Fairplex and was target of two uniformed officers: Sandra Gatts, Monrovia Police Department and Albert Cobos, L.A. County Sheriffs Dept. Officer Gatt pointed a gun in the face of plaintiff and officer Cobos placed his hand on his gun in the holster but did not draw.

Plaintiff was stunned at this time as there was no probable cause for this action and no explanation was given to Plaintiff. Both officers then walked away from the area. Plaintiff was very shaken in that his life flashed before him eyes as though facing certain

death. Plaintiff was later informed that this was a practice ground for police training.

I, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Respectfully submitted,



Charlie Shephard

DECLARATION OF CHARLIE SHEPHARD

I, Charlie Shephard petitioner in this action declare as follow to be true and correct to the best of my knowledge, as follows:

GENERAL NEGLIGENCE

Officer Sandra P. Gatt pointed a gun in the face of plaintiff. Charlie Shephard was a paying guest at the Pomona Fairplex without any probable cause, thereby causing him extreme fear for his life. Officer Sandra Gatt did not read him his miranda rights.

Officer Albert Cobos was in the company of Officer Gatt; however, he placed his hand on his weapon but did not remove it from the holster.

Neither officer gave any explanation as to why they performed this act. They both just walked out of the area leaving plaintiff in a state of fear

CLAIMS FOR RELIEF

Plaintiff alleges further that the City of Los Angeles is liable for all plaintiff's injuries sustained as alleged herein by virtue of Calif. Government Code Section 815.2 (a), which makes publis entities in California vicariously liable under 42 U.S.C. Section 1983 for violations of civil rights by their employees while acting within the course and scope of their employment.

FIRST CLAIM FOR RELIEF

1. 42 U.S.C. Section 1981 Defendants deliberately, or recklessly, denied Plaintiff full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by other citizens, all to Plantiff's damage as hereinabove alleged.

SECOND CLAIM FOR RELIEF

2. 42 U.S.C. Section 1983. Defendants, acting under color of State Law deprived Plaintiff of Rights, Privileges, and immunities secured by the Constitution and Laws of the United States, including the Fourth and Fourteenth Amendments, by, inter alia:

a. Subjecting Plaintiff to excessive force and threats of great injury and death;

b. Hindering Plaintiff without probable cause and in an unreasonable manner.

c. (Trauma) the gun was pointed at my face (head);

d. Interfering with Plaintiff's right by covering up for "Officer Misconduct."

THIRD CLAIM FOR RELIEF

3. 42 U.S.C. Section 1985(3). Defendant, and two or more of them, conspired for the purpose of:

a. Depriving Plaintiff of Equal Protection of the Law:

b. Depriving Plaintiff of Due Process of Law, and

c. Hindering the Constituted Authorities from giving or securing Equal Protection and Due Process of Law to all persons, all to Plaintiff's damages as hereinabove alleged.

Date: Charlie Shephard

Respectfully submitted

Charlie Shephard
P. O. Box 521, Ontario, CA 91762